SOUTH CAROLINA PUBLIC SERVICE COMMISSION

HEARING OFFICER DIRECTIVE

DOCKET NOS. 2017-370-E, 2017-207-E, and 2017-305-E **ORDER NO. 2018-80-H**

JULY 5, 2018

David Butler
Hearing Officer

DOCKET DESCRIPTION:
Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans

Friends of the Earth and Sierra Club, Complainant/Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent

Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company's Rates Pursuant to S.C. Code Ann. § 58-27-920

MATTER UNDER CONSIDERATION:
Joint Applicants' Motion to Compel ORS's Full and Complete Response to Discovery Requests

HEARING EXAMINER ACTION:

The Joint Applicants (South Carolina Electric & Gas and Dominion Energy, Inc.) (individually, SCE&G and Dominion) move to compel the South Carolina Office of Regulatory Staff ("ORS") to provide full and complete responses to Joint Applicants' First Set of Interrogatories and First Requests for Production of Documents (collectively, the "Discovery Requests"). For the reasons stated below, the Motion is granted in part and denied in part.

First, this Hearing Officer must discuss the issue of whether or not ORS is subject to discovery. The answer is clearly in the affirmative. S.C. Code Ann. Section 58-4-10 (B) states, in part, that "Unless and until it chooses not to participate, the Office of Regulatory Staff must be considered a party of record in all filings, applications, or proceedings before

the Commission." 10 S.C. Code Ann. Regs. 103-835 holds that all discovery matters not included in Commission Regulations will be governed by the South Carolina Rule of Civil Procedure ("SCRCP"). SCRCP 33 (a) and 34 (a) state specifically that a party can serve interrogatories and requests for production of documents "on any other party." There are no provisions in the rules or any other law which would exempt ORS from discovery, including discovery requests filed with ORS by other parties. Therefore, ORS is subject to appropriate discovery, as any other party would be. This is supported by *Utilities Services of South Carolina, Inc. v. South Carolina Office of Regulatory Staff*, 392 S.C. 96, 708 S.E. 2d 755 (2011), which states: "…we hold that the PSC is the ultimate fact-finder in a ratemaking application. It has the power to independently determine whether an applicant has met its burden of proof. The PSC is not bound by ORS's determination that an expenditure was reasonable and proper for inclusion in a rate application. The PSC may determine-independent of any party-that an expenditure is suspect and requires further scrutiny…" 708 S.E. 2d at 761.

Therefore, ORS is a party that is subject to discovery just like any other party in this case. However, ORS states that it is not the "source of facts and evidence" in these proceedings, noting that, as the utilities in these matters, the Joint Applicants are the actual "source of facts and evidence." While it is true that the utilities will be the source of the vast majority of the expected evidence in this proceeding, ORS has had a statutory role in the project as well and may have discoverable information or documents that are likely to lead to relevant evidence. The Hearing Officer certainly cannot categorically rule out the possibility. I would agree that a lack of discovery responses from SCE&G did limit ORS's ability to answer certain interrogatories and comply with certain requests for production in these dockets. However, ORS bears the burden of proof on whatever issues may remain in Docket No. 2017-305-E, after the General Assembly's passage of S.C. Code Ann. Section 58-34-10 *et seq.*, and, accordingly ORS must be the "source of facts and evidence" as applicant in at least that case, even though some facts and evidence may be based on information from the Joint Applicants. Of course, as noted above, ORS is in fact subject to discovery in all Dockets in the present proceedings.

In any event, with some exceptions as listed below, ORS must supplement its answers to the Joint Applicants' Interrogatories and Requests for Production after receipt and review of SCE&G's discovery responses provided on or before July 6, 2018, (or thereafter, based on the mandate of SCRCP 26 (e), which requires supplementation of discovery responses). ORS has stated that some of the information requested by SCE&G would be provided at the time of pre-filing of testimony and exhibits. This is insufficient. Supplemental responses should be provided as soon as practicable after review of incoming discovery material from the Joint Applicants.

With regard to individual disputes over the different discovery responses, the Hearing Officer will discuss the issues in the following paragraphs.

The relief requested by the Joint Applicants for Interrogatory # 1 is denied. The Joint Applicants claim that ORS did not indicate whether written or recorded statements were taken from any of the witnesses, and they ask for correction of this omission. This request for relief is denied, since ORS did actually indicate that it was not in possession of written or recorded statements from the listed witnesses. With regard to Interrogatory # 3, ORS should supplement its answers after due consideration of the discovery material to be received from the Joint Applicants.

Interrogatory # 7 is clearly overbroad. Asking for all communications since the Petition was filed, along with the names of those involved in the communication and the nature of it expects ORS to almost perform the impossible. ORS is a large agency with a number of Departments, where many communications are likely taking place simultaneously. The number and nature of such communications has to boggle the mind. SCRCP 26 (b) (1) states that discovery must be regarding matters which are relevant to the subject matter involved in the pending action. Such matters may be a small subset of what is requested by this interrogatory, but the overbreadth of the interrogatory cancels out the legitimacy of its inquiry. Relief is denied for Interrogatory # 7. A much more tailored request may produce better results.

Similarly, Requests for Production # 2 and # 6 are overbroad. Request # 2 asks for photographs "related in any way to this Docket." Request # 6 demands all written communications with ORS or any present or former officer or employee of ORS or any intervenor in this Docket since August 1, 2017 related to SCE&G. These requests are overbroad on their face. Asking for a document or other product "related in any way to this Docket" could encompass thousands of documents unrelated to any claim or defense raised. Also, requesting "all communications related to SCE&G" could encompass a predominance of issues other than the V.C. Summer Project. Relief is denied for these Requests.

The Joint Applicants also request that this Hearing Officer compel ORS to verify its responses to the discovery requests, based on the language contained in 10 S.C. Code Ann. Regs. Sections 103-833 (B) and (C), which require "appropriate verification." SCE&G further points out the language of SCRCP 33 (a) which requires that interrogatories be answered "under oath." ORS opines that providing the responses over a signature block was sufficient. I disagree. It is clear that when the Commission requires "verification" in its Regulations, it is referring to the traditional sworn statement attesting that the provided responses are true to the best of the signatory's knowledge. This was not provided here.

Accordingly, ORS shall provide its original discovery responses with the proper verification as outlined above. ORS should also provide any supplemental responses with the verification discussed above.

Again, after receiving and evaluating discovery responses from SCE&G or before July 6, 2018 or thereafter, ORS should supplement the interrogatory responses and responses to requests for production which remain after this ruling, where appropriate. ORS does not need to supplement responses to Joint Applicant inquiries declared overbroad above. Finally, on Requests for Production, ORS need not provide copies to SCE&G of documents which SCE&G already possesses, and/or are available on the Commission's Docket Management System, but ORS may simply note the location of said documents in its responses.

This ends the Hearing Officer's Directive.